



Civil Resolution Tribunal

Date Issued: August 21, 2018

File: ST-2017-005208

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS 950 v. McDade et al*, 2018 BCCRT 462

B E T W E E N :

The Owners, Strata Plan KAS 950

APPLICANT

A N D :

John McDade and Susan McDade

RESPONDENTS

A N D :

The Owners, Strata Plan KAS 950

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, and respondent by counterclaim, The Owners, Strata Plan KAS 950 (strata) is a strata corporation existing under the *Strata Property Act* (SPA).
2. The respondents, and applicants by counterclaim, John McDade and Susan McDade (owners), own a strata lot in the strata.
3. The strata says the owners placed patio slabs and furniture on common property without permission, and the owners are renting out their strata lot on a short-term basis in violation of the bylaws. The strata seeks orders that the owners cease these activities, and restore the common property to its original condition.
4. In their counterclaim, the owners seek orders that the strata stop confronting and questioning visitors and tradespeople attending their strata lot, and that the strata hire a lawyer or licensed property manager to issue bylaw violation notices.
5. The strata is represented by a strata council member. The owners are self-represented.
6. For the reasons set out below, I find the owners must remove their items from the common property. I decline to order the other remedies sought by the parties.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
9. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
10. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

Additional Issues

11. The original dispute notices filed by the parties list additional issues involving removal and alteration of walls, city inspections, bird feeders, and parking. Some of these issues were resolved through the tribunal facilitation process. In this decision, I have only adjudicated the remaining unresolved issues identified in the parties' submissions.

ISSUES

12. The issues in this dispute are:
 - a. Did the owners place patio slabs and furniture on common property without permission, and if so, what is the appropriate remedy?
 - b. Did the owners rent out their strata lot contrary to the bylaws, and if so, what is the appropriate remedy?
 - c. Should I issue an order that the strata stop confronting and questioning visitors and tradespeople attending the owners' strata lot?

- d. Is the strata required to hire a lawyer or licensed property manager to issue bylaw violation notices?

EVIDENCE, FINDINGS & ANALYSIS

13. I have read all of the evidence provided, but refer only to that which I find relevant to provide context for my decision.

Patio Slabs and Furniture on Common Property

14. The parties agree that the owners have placed concrete paver slabs and patio furniture on common property. The strata says the pavers and furniture are a significant change in the use or appearance of a strata lot performed by the owners without permission. The strata seeks an order that the owners remove the items and return the common property to its original condition.
15. The photos provided in evidence show that there are 8 large pavers, each about 2 feet square. These are placed on top of black plastic sheeting, which is in turn placed on top of a gravel and dirt base. Around and on top of the pavers, there are patio chairs, a table, a patio umbrella, temporary lights, and some plants and planters.
16. These items are placed beside a fence which adjoins a neighbouring property. Four of the pavers are set in a line along the fence, stretching approximately 8 feet.
17. The owners say there is no bylaw requiring strata permission, and the objects they placed do not constitute an alteration of common property. I disagree with both assertions.
18. The documents filed with the Land Title Office show that before 2002, the strata's bylaws were the standard bylaws set out in part 5 of the former *Condominium Act*, with a few amendments which are not relevant to this dispute. Under the provisions of the SPA, which replaced the *Condominium Act* and came into force in 2002, the standard bylaws in the SPA were deemed to be the statutory bylaws for every

strata corporation, no matter when the strata corporation was created. The standard bylaws do not need to be filed at the Land Title Office. Since 2002, the strata has not replaced the standard bylaws, although they have made certain amendments relating to pets, an age 55 restriction for occupants, and short-term rentals. Except for these amendments, the standard bylaws set out in the schedule to the SPA apply.

19. Bylaw 6(1) of the standard bylaws says that an owner must obtain written approval from the strata corporation before making an alteration to common property. Based on the wording of the bylaw, the need for written permission applies to any alteration, not just significant alterations. It is therefore not necessary for the strata to prove that the patio area created by the owners is a “significant” alteration.
20. I find that by placing plastic sheeting, pavers, and patio furniture, the owners altered the common property. The photos provided in evidence show that the pavers create a concrete patio approximately 8 by 4 feet where there was none before. The area was previously open, and was not a patio or paved area. The pavers, in particular, are not items that could easily be removed by one person. Making an open area into a hard-surfaced patio area is an alteration.
21. The owners cite *The Owners, Strata Plan LMS 4255 v. Newell, 2012 BCSC 1542*, in which the BC Supreme Court found that the installation of a hot tub and air conditioner did not constitute an alteration to common property, for the purpose of standard bylaw 6(1). The judge noted in paragraph 90 of her decision that her finding was based on the facts before her. I find those facts are distinguishable from the facts in this dispute.
22. The hot tub and air conditioner in that case were installed on a limited common property rooftop deck above the installer’s strata lot. This deck was an area reserved solely for the use and enjoyment of one particular strata lot, which would include placement and storage of the owner’s items. In contrast, the common property at issue in this dispute is fully shared, and is not an area reserved for the owners’ exclusive use. In *Newell*, the strata lot owner placed items to use on the

deck reserved for his own use, while in this dispute the owners unilaterally created a patio in what was previously a shared lawn/garden area. In this context, the installation of large, heavy pavers to create a patio constitutes an alteration.

23. The owners also cite my decision in *Giddings et al v. The Owners, Strata Plan BCS 3620*, 2018 BCCRT 61. They submit that I found that patio furniture was not a significant alteration to common property. That is incorrect, as I did not make such a finding in that decision. I merely noted that the strata lot owners in that case said their gazebo was part of a patio furniture set. In *Giddings*, I found that a solid-roofed gazebo placed over a patio was an alteration to common property. I reasoned as follows at paragraphs 32-33:

While the original tent-like gazebo was somewhat similar to an umbrella, the current wooden structure and polycarbonate roof is not. The constructed roof was not purchased as part of the patio furniture set, and looks substantially different from the fabric-roofed gazebos shown in the catalogue photograph provided in evidence. The solid-roofed gazebo is not similar to an umbrella in its form, function, or appearance. Rather, it has a solid roof with a span of several feet, and it could not be collapsed or removed by a single person in a few minutes.

33. I find that this reasoning applies equally to this case. The patio area created by the owners is not similar to the open area that was there before. Its appearance and use are substantially different. The pavers are too large and heavy to be moved by a single person in a few minutes. For these reasons, I find that the creation of the patio area constituted an alteration to common property, and required written permission from the strata corporation under bylaw 6(1).
24. The owners argue that other strata lot owners have altered common property, so by singling out their patio the strata has acted in a manner that is oppressive and unreasonably prejudicial to them. I disagree. The photos of other common property areas provided by the owners show plants, weeds, and garden areas. None show pavers, a created patio area, or anything similar to the owners' installation. I therefore find that the strata has not unreasonably singled out the owners for their patio.

25. As the owners have breached bylaw 6(1) by creating a patio area without permission, I find that they must remove it. They must remove the black plastic material, the pavers, and the furniture. While the owners use of their patio furniture on common property does not appear to violate the strata bylaws, they may not store it there. Using common property for storage would violate bylaw 3(1), which says an owner may not use common property in a way that unreasonably interferes with the rights of other persons to use and enjoy the common property, or in a way that is contrary to a purpose for which the common property is intended, as shown expressly or by necessary implication on or by the strata plan. The strata plan does not designate the common property in question as a storage area.

Short-Term Rental of Strata Lot

26. The strata seeks an order that the respondents stop renting out their strata lot on a short-term basis, and remove their website rental listing.

27. The owners admit to renting out their strata lot on a short-term basis on three occasions from June to August 2017, but say there was no bylaw preventing this activity at the time of the rentals. They say they have not rented their strata lot since August 2017.

28. The strata admits there was no bylaw preventing short-term rentals until November 2017. This is confirmed by the strata corporation bylaws registered with the Land Titles Office, which show that a new short-term rental restriction bylaw came into force on November 8, 2017.

29. The strata did not provide any evidence that the owners did have short-term rentals after August 2017, or that they listed their strata lot for rent after the new bylaw came into effect. The website listing provided by the strata is from June or July 2017. The fact that the owners' daughter described the strata lot as her "parents' vacation home" is not determinative, as the owners are entitled to keep

the strata lot as a vacation home for their own use, and are not required to be in continuous occupancy.

30. The strata says the owners' rentals in 2017 were contrary to a municipal bylaw. The tribunal does not have authority to enforce or order compliance with municipal bylaws in the context of this dispute, as that matter does not arise under the SPA. I therefore make no findings on that matter.
31. The strata bears the burden of proving its claim of short-term rentals contrary to the strata corporation's bylaws. For the reasons set out above, I find they have not done so. I therefore decline to make any order about rentals.

Confronting Visitors and Tradespeople

32. The owners seek an order that the strata be ordered not to confront visitors or tradespeople visiting their strata lot. They say strata council members have aggressively questioned guests and workers approaching their strata lot.
33. The strata denies this conduct, and also says the strata must monitor who is attending the strata complex in order to prevent such things as work without building permits, short-term rentals, and occupancy contrary to the strata's age restriction bylaw.
34. I find the tribunal does not have jurisdiction to make the order sought by the owners. I accept the decision of this tribunal that restraining orders are outside the tribunal's jurisdiction: *Knibbs v. Kuan et al*, 2018 BCCRT 152. Also, as submitted by the owners, in *Grant v. The Owners, Strata Plan BCS 337*, 2018 BCCRT 70, the tribunal refused to make an order based on possible future events. The remedy sought by the owners relates to future conduct that has not yet happened, and might not happen, so I decline to grant the order.

35. Having said this, I caution the strata council members while they have a duty under section 26 of the SPA to enforce bylaws and rules, the owners also have a right to privacy in their strata lot. The strata may not interfere with their reasonable use and enjoyment of the strata lot. Based on the history of conflict between the parties set out in the evidence, and the need to live in proximity in the future, I recommend, but do not order, that the strata obtain professional advice on how to balance these responsibilities.

Bylaw Violation Notices

36. The owners say the strata should be ordered to use a lawyer or registered property manager to review and issue bylaw violation notices.

37. There is no requirement in the SPA that bylaw infraction notices be issued or reviewed by a lawyer or registered property manager. The strata is actually not required to give any notice before enforcing bylaws unless fines or evictions are imposed, which they were not in this case. Section 129(2) of the SPA says the strata “may” give a person warning or time to comply before enforcing a bylaw or rule.

38. Section 61 of the SPA sets out notice procedures, which apply where notice is required. Section 61 says the strata may provide official notice by various listed methods, depending on whether or not the person has provided the strata corporation with an address outside the strata plan for receiving notices and other documents.

39. Thus, the SPA sets out comprehensive requirements about when notice is required and how it must be provided. None of these requirements include involvement by a lawyer or property manager. For that reason, I decline to grant the order sought by the owners.

DECISION AND ORDERS

40. I order that within 30 days of this decision, the owners must remove the black plastic material, the pavers, and their furniture from the common property.
41. The owner's counterclaims are dismissed.
42. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. As the strata was partially successful in this dispute, I see no reason to depart from this general rule. I therefore order the owners to reimburse the strata \$225 for tribunal fees. The owners' counterclaims were not successful, so I do not order reimbursement of their tribunal fees.
43. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a strata corporation is not required to contribute to any monetary order issued against the strata corporation or to any expenses the strata corporation incurs in defending the claim. I therefore order the strata to ensure that none of the expenses incurred by the strata in defending against the owners' counterclaims are allocated to the owners.
44. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.
45. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order

which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kate Campbell, Tribunal Member